



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail#: 7004-1160-0002-3622-6789

In Reply Refer to:

EPA File No.: 01R-14-R2

Mark A. Chertok
Sive Paget & Riesel, P.C.
460 Park Avenue
10th Floor
New York, New York 10022

Re: Rejection of Administrative Complaint

Dear Mr. Chertok,

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is rejecting the administrative complaint filed against the Port Authority of New York and New Jersey (Port Authority) received by the EPA on January 27, 2014. The complaint alleges adverse and discriminatory impacts in connection with the Port Authority's construction project to raise the roadway of the Bayonne Bridge (the Bayonne Bridge Navigational Clearance Project).

Pursuant to the EPA's nondiscrimination administrative regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate Agency (See 40 Code of Federal Regulations (C.F.R.) § 7.120(d)(1)). For a complaint to be accepted for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing (See 40 C.F.R. § 7.120(b)(1)). Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. (See 40 C.F.R. § 7.120(b)(2)). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. (See 40 C.F.R. § 7.15). For your reference, a copy of the EPA's nondiscrimination regulations are enclosed.

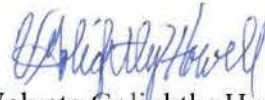
The OCR is rejecting your complaint as untimely. Under the EPA's nondiscrimination regulations, a complaint must be filed within 180 calendar days of the alleged discriminatory act. Complaints alleging discriminatory effects arising out of a permit should be filed with the EPA within 180 calendar days of issuance of that permit. Because the Bayonne Bridge Navigational

Clearance Project was authorized pursuant to the Permit Amendment issued on May 23, 2013, and your Title VI complaint was filed with the EPA on January 27, 2014, the OCR cannot accept your complaint for investigation.

The OCR does not agree that the Bayonne Bridge Navigational Clearance Project constitutes an ongoing discriminatory action. A statute of limitations begins to run when the facts that would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his or her rights.¹ The Port Authority applied to the U.S. Coast Guard for the Bayonne Bridge Navigational Clearance Project Permit Amendment on or about November 8, 2011. When the Coast Guard approved the Permit Amendment on May 23, 2013, there was no obvious factual contingency that put construction in doubt.² The record in this matter demonstrates that impacts alleged in your complaint were raised during the permit issuance process.³ Therefore, the public (and Complainants) had sufficient notice of facts that would support a cause of action upon the issuance of the Permit Amendment.

If you have questions regarding this letter, please contact Helena Wooden-Aguilar (202) 564-0792 or by electronic mail at wooden-aguilar.helena@epa.gov.

Sincerely,



Velveta Golightly-Howell
Director

Enclosures

cc: Elise Packard, Associate General Counsel
Civil Rights and Finance Law Office (MC 2399A)

¹ *Del. State College v. Ricks*, 449 US 250, 258 (1980) (holding that the proper focus for statute of limitations periods is upon the time of the discriminatory act, not upon the time that the consequences of the act became most painful. That is, the denial of tenure was the discriminatory act and not the termination of employment which was the natural consequence of that act); *Rozar v. Mullis*, 85 F.3d 556, 561-562 (11th Cir. 1996) (determining in the environmental permitting context that the statute of limitations does not begin to run until the facts which would support a cause of action are apparent or should be apparent, so the time period was triggered when the county vote selecting a landfill site occurred and was known as evidenced by one plaintiff voicing protest prior to that vote).

² *Franks v. Ross*, 313 F.3d 184, 195 (4th Cir 2002) finding that the statute of limitations did not begin to run until the landfill permit was issued because there was no "obvious factual contingency that put construction seriously in doubt").

³ See Transcript of Newark, New Jersey Session about Bayonne Bridge Raising Project Draft Environmental Assessment/Section 106 Public Meeting(First Session), pgs. 128-129 (February 13, 2013), available at <http://www.regulations.gov/#!documentDetail;D=USCG-2012-1091-0096>; See Transcript of Newark, New Jersey Session about Bayonne Bridge Raising Project Draft Environmental Assessment/Section 106 - Public Meeting (Second Session), pgs. 39-43 (February 13, 2013) (comments of McDERMOTT and THURMAN), available at <http://www.regulations.gov/#!documentDetail;D=USCG-2012-1091-0094>.

Richard J. Manna, Deputy Civil Rights Official, U.S. EPA Region 2
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